



FH  
[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

**DECISION**  
Case #: CCO - 175825

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**PRELIMINARY RECITALS**

Pursuant to a petition filed July 28, 2016, under Wis. Admin. Code, §HA 3.03, to review a decision by Milwaukee Early Care Administration to recover child care assistance, a hearing was held on August 18, 2016, by telephone.

The issue for determination is whether petitioner received child care erroneously due to being a child care provider herself.

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED]

Respondent:

Department of Children and Families  
201 East Washington Avenue, Room G200  
Madison, WI 53703

By: [REDACTED]  
Milwaukee Early Care Administration  
1220 W. Vliet St., 200 East  
Milwaukee, WI 53205

**ADMINISTRATIVE LAW JUDGE:**

Brian C. Schneider  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Petitioner applied for child care assistance under the Wisconsin Shares program on August 15, 2015. She reported that she needed the care during evenings when she was attending school at [REDACTED] [REDACTED] [REDACTED] [REDACTED]. She reported that she was employed daily as the [REDACTED]

- ## DISCUSSION

Thus petitioner's child care application was handled correctly by the agency worker. The problem was not an error by the worker, but that the Department had not yet updated its Manual to reflect the new law. The Manual was updated with a new release effective September 28, 2015.

I conclude that the overpayment should be rescinded. Petitioner received child care assistance from August through November as it was allowed by the Department's Child Care Manual when the application was made and processed. When the agency personnel noted the change in the Manual provision, the agency discontinued petitioner's eligibility. It does not appear that the agency personnel informed petitioner that she could seek a waiver, and had she done so, she likely would have met the criteria under Wis. Admin. Code, §DCF 201.04(2j)(c)6.

I note two additional items. First, the agency reasoning in the overpayment notice is a bit of a red herring. The overpayment notice says that for child care to occur for technical school courses, the person must participate in an approved activity for 20 hours per month. Petitioner's problem was not a lack of work in an approved activity; it was that the approved activity was one that disqualified her for child care eligibility. Petitioner clearly was working in her child care center more than 20 hours per week, and the schooling was for her to maintain her ability to work as a child care provider. Thus, if not for the prohibition for child care providers receiving Shares assistance petitioner could have been eligible for the Shares assistance while she was attending classes.

Second, while I say that petitioner likely would have met the criteria under Wis. Admin. Code, §DCF 201.04(2j)(c)6, the new Manual provision, §4.2.3, leaves out the subsection (2j)(c)6 criterion as a basis for granting the waiver. It clearly sets out subsections 1 through 5 of subsection (2j)(c), but it excludes number 6, which is the only criterion for which petitioner could seek a waiver. If I were reviewing a denial of petitioner's waiver request, I would find that the Manual provision conflicts with the administrative code provision.

### **CONCLUSIONS OF LAW**

The overpayment claim against petitioner must be rescinded because the services she received were allowed under the Wisconsin Shares Child Care Subsidy Manual that was effective the dates that she applied for assistance and the application was processed.

**THEREFORE, it is**

**ORDERED**

That the matter be remanded to the agency with instructions to rescind child care overpayment claim no. [REDACTED] against petitioner and to cease recovery of it. The agency shall do so within 10 days of this decision.

### **REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

### **APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Children and Families, 201 East Washington Avenue, Room G200, **and** on those identified in this decision as “PARTIES IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,  
Wisconsin, this 23rd day of August, 2016

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Brian C. Schneider  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on August 23, 2016.

Milwaukee Early Care Administration - MECA  
Public Assistance Collection Unit  
Child Care Fraud